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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/014,766

12/11/2001

Christos Dimitrios Dimitrakopoulos

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9469

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09/03/2004

Alvin J. Riddles
Box 34, Candlewood Isle,
New Fairfield, CT 06812

EXAMINER

KIELIN, ERIK J

ART UNIT

PAPER NUMBER

2813

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/014,766

Applicant(s)

DIMITRAKOPOULOS ET AL.

Examiner

Erik Kielin

Art Unit

2813

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 06 August 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 10-12.Claim(s) withdrawn from consideration: 6-9.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Erik Kielin
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: The prior art teaches and/or suggests each of the features of the claimed invention in proper combination. Regarding the drawings, Examiner stands by the objections for the reasons of record, based upon the evidence of record that the transistors shown in Figs. 1 and 2 are admitted by Applicant to be prior art. To further clarify Examiner's position, it is noted that the instant specification states that reference character 20 in the conventional transistors shown in Figs. 1 and 2 is "the semiconductor material." (See instant specification, p. 2.) There is no requirement that the semiconductor material 20 be the perylene claimed. Examiner has taken nothing out of context, as alleged by Applicant, but rather has taken Figs. 1 and 2 in the context of the specification. Further in light of the fact that Applicant has provided references in the IDS as discussed in the specification, that very clearly show the transistors of Figs. 1 and 2, Applicant cannot properly now state that the semiconductor material 20 is now somehow the claimed perylene, in order to avoid the evidence of record to the contrary. Finally in this regard, drawings objections are NOT appealable subject matter but are, instead, petitionable subject matter. 37 CFR 1.191(c) states "An appeal when taken must be taken from the rejection of all claims under rejection which the applicant or patent owner proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered." Should Applicant disagree the objection to the drawings, Applicant must petition the matter. Furthermore, since there exists a rejection of claims 11 and 12 over Applicant's admitted prior art Figs. 1 and 2, the matter of whether the transistors of Figs. 1 and 2 are prior art must be settled prior to appeal in order for the Board to properly consider the rejection.